

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 220

Introduced by Assembly Member Brownley
(Coauthor: Assembly Member Caballero)

February 4, 2009

An act to amend Sections 17070.15, 17070.63, 17071.75, 17072.32, 17074.15, 17074.16, 17074.26, and 17076.10 of the Education Code, relating to public education facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 220, as amended, Brownley. Public education facilities: Kindergarten-University Public Education Facilities Bond Act of 2009: Act.

~~Existing~~

(1) *Existing* law, the California Constitution, prohibits the Legislature from creating a debt or liability that singly or in the aggregate with any previous debts or liabilities exceeds the sum of \$300,000, except by an act that (a) authorizes the debt for a single object or work specified in the act, (b) has been passed by a $\frac{2}{3}$ vote of all the members elected to each house of the Legislature, (c) has been submitted to the people at a statewide general or primary election, and (d) has received a majority of all the votes cast for and against it at that election.

The Leroy F. Greene School Facilities Act of 1998 (*Greene Act*) requires the State Allocation Board (*board*) to allocate to applicant school districts, prescribed per-unhoused-pupil state funding for construction and modernization of school facilities, including hardship funding, and supplemental funding for site development and acquisition.

This bill would state the intent of the Legislature to enact legislation that would create a Kindergarten-University Public Education Facilities Bond Act of 2009, to become operative only if approved by the voters at the ~~November 3, 2009~~, next statewide general election, and to provide for the submission of that act to the voters at that election. The bill also would state that it is the intent of the Legislature that such a bond act, if approved by the voters at that election, would provide for the issuance of an unspecified amount of state general obligation bonds to provide aid to school districts, county superintendents of schools, county boards of education, the California Community Colleges, the University of California, the Hastings College of the Law, and the California State University to construct and modernize education facilities.

(2) The Greene Act requires the board to allocate to applicant school districts, prescribed per-unhoused-pupil state funding for construction and modernization of school facilities, including hardship funding, and supplemental funding for site development and acquisition.

This bill would define “cost of project” for purposes of the act as including the cost of all real estate property rights and easements acquired, the cost of developing the site, streets, and utilities immediately adjacent to the site, the cost of other offsite development not immediately adjacent to the site required by the project as consistent with the environmental impact report adopted by the governing board, the cost of construction, reconstruction, or modernization of buildings, and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project.

(3) Existing law requires a school district to certify that the grant amount provided under the act, combined with local funds, is sufficient to complete the school construction project for which the grant is intended.

This bill would modify the certification to instead be that the grant amount provided by the act, combined with local funds, is sufficient to complete the classrooms included in the construction project for which the grant is intended.

(4) Existing law requires the ongoing eligibility of a school district for new construction funding to be determined by making specified calculations, one of which is to add the number of pupils who can be

adequately housed in the existing school building capacity of a school district to the number of pupils for whom facilities were provided from any state or local funding source after the existing school building capacity was determined.

This bill would revise the calculation described above by specifying that the 2nd addend is the number of pupils for whom permanent facilities were provided from any state source or permanent facilities provided entirely from a local funding source after the existing school building capacity was determined.

(5) Existing law requires that funding for an approved new construction school facilities project be released equal to the amount of the local match when the school district certifies that it has entered into a binding contract for completion of the project. The same certification is required to be made in connection with the release of disbursements for modernization projects. If the school district receives an apportionment, but has not met the criteria to have funds released within a period established by the board, but not to exceed 18 months, the board is required to rescind the apportionment and deny the district's application.

This bill would require the school district instead to certify that it has entered into a binding contract for professional services or for construction, or both, in order to complete the approved project. The bill would no longer authorize the board to establish a period of less than 18 months within which a school district is allowed to meet the criteria to have funds released and would establish 18 months as that period. The board would be authorized, at its discretion, to extend the 18-month period.

(6) The bill also would make technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 legislation that would create a Kindergarten-University Public
- 3 Education Facilities Bond Act of 2009, to become operative only
- 4 if approved by the voters at the ~~November 3, 2009~~, next statewide
- 5 general election, and to provide for the submission of the bond act
- 6 to the voters at that election. It is also the intent of the Legislature
- 7 that such a bond act, if approved by the voters at that election,

1 would provide for the issuance of ____ (\$____) of state general
2 obligation bonds to provide aid to school districts, county
3 superintendents of schools, county boards of education, the
4 California Community Colleges, the University of California, the
5 Hastings College of the Law, and the California State University
6 to construct and modernize education facilities.

7 *SEC. 2. Section 17070.15 of the Education Code is amended*
8 *to read:*

9 17070.15. The following terms, wherever used or referred to
10 in this chapter, shall have the following meanings, respectively,
11 unless a different meaning appears from the context:

12 (a) "Apportionment" means a reservation of funds for the
13 purpose of eligible new construction, modernization, or hardship
14 approved by the board for an applicant school district.

15 (b) "Attendance area" means the geographical area serving an
16 existing high school and those junior high schools and elementary
17 schools included therein.

18 (c) "Board" means the State Allocation Board as established by
19 Section 15490 of the Government Code.

20 (d) "Committee" means the State School Building Finance
21 Committee established pursuant to Section 15909.

22 (e) "County fund" means a county school facilities fund
23 established pursuant to Section 17070.43.

24 (f) *"Cost of project" includes, but is not limited to, the cost of*
25 *all real estate property rights and easements acquired, the cost of*
26 *developing the site, streets, and utilities immediately adjacent to*
27 *the site, the cost of other offsite development not immediately*
28 *adjacent to the site required by the project as consistent with the*
29 *environmental impact report adopted by the governing board, the*
30 *cost of construction, reconstruction, or modernization of buildings*
31 *and the furnishing and equipping, including the purchase of*
32 *educational technology hardware, of those buildings, the*
33 *supporting wiring and cabling, and the technological*
34 *modernization of existing buildings to support that hardware, the*
35 *cost of plans, specifications, surveys, and estimates of costs, and*
36 *other expenses that are necessary or incidental to the financing*
37 *of the project. For purposes of this section, "educational*
38 *technology hardware" includes, but is not limited to, computers,*
39 *telephones, televisions, and video cassette recorders.*

40 (f)

(g) “Department” means the Department of General Services.

~~(g)~~

(h) “Fund” means the applicable 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, established pursuant to Section 17070.40.

~~(h)~~

(i) “Good repair” has the same meaning as specified in subdivision (d) of Section 17002.

~~(i)~~

(j) “Modernization” means any modification of a permanent structure that is at least 25 years old, or in the case of a portable classroom, that is at least 20 years old, that will enhance the ability of the structure to achieve educational purposes.

~~(j)~~

(k) “Portable classroom” means a classroom building of one or more stories that is designed and constructed to be relocatable and transportable over public streets, and with respect to a single story portable classroom, is designed and constructed for relocation without the separation of the roof or floor from the building and when measured at the most exterior walls, has a floor area not in excess of 2,000 square feet.

~~(k)~~

(l) “Property” includes all property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of this chapter.

~~(l)~~

(m) “School building capacity” means the capacity of a school building to house pupils.

~~(m)~~

(n) “School district” means a school district or a county office of education. For purposes of determining eligibility under this chapter, “school district” may also mean a high school attendance area.

SEC. 3. Section 17070.63 of the Education Code is amended to read:

17070.63. (a) The total funding provided under this chapter shall constitute the state’s full and final contribution to the project and for eligibility for state facilities funding represented by the number of unhoused pupils for which the school district is receiving the state grant. As a condition of receipt of funds, a school district

1 shall certify that the grant amount, combined with local funds,
2 shall be sufficient to complete *the classrooms included in the*
3 school construction project for which the grant is intended.

4 (b) ~~Any funds~~ *Funds* provided to a school district under any
5 article in this chapter ~~may~~ *shall* not be counted towards the local
6 match for receipt of funds under any other article in this chapter.

7 (c) ~~Any savings~~ *Savings* achieved ~~by~~ *through* the ~~district's~~
8 efficient and prudent expenditure *by the school district* of these
9 funds shall be retained by the district in the county fund for
10 expenditure by the district for other high priority capital outlay
11 purposes.

12 *SEC. 4. Section 17071.75 of the Education Code is amended*
13 *to read:*

14 17071.75. After a one-time initial report of existing school
15 building capacity has been completed, the ongoing eligibility of a
16 school district for new construction funding shall be determined
17 by making all of the following calculations:

18 (a) A school district that applies to receive funding for new
19 construction shall use the following methods to determine projected
20 enrollment:

21 (1) A school district that has two or more schoolsites each with
22 a pupil population density that is greater than 115 pupils per acre
23 in kindergarten and grades 1 to 6, inclusive, or a schoolsite pupil
24 population density that is greater than 90 pupils per acre in grades
25 7 to 12, inclusive, as determined by the Superintendent using
26 enrollment data from the California Basic Educational Data System
27 for the 2004–05 school year, may submit an application for funding
28 for projects that will relieve overcrowded conditions. That school
29 district may also submit an alternative enrollment projection for
30 the fifth year beyond the fiscal year in which the application is
31 made using a methodology other than the cohort survival
32 enrollment projection method as defined by the board pursuant to
33 paragraph (2), to be reviewed by the Demographic Research Unit
34 of the Department of Finance, in consultation with the department
35 and the Office of Public School Construction. If the Office of
36 Public School Construction and the Demographic Research Unit
37 of the Department of Finance jointly determine that the alternative
38 enrollment projection provides a reasonable estimate of expected
39 enrollment demand, a recommendation shall be forwarded to the

1 board to approve or disapprove the application, in accordance with
2 all of the following:

3 (A) Total funding for new construction projects using this
4 method shall be limited to five hundred million dollars
5 (\$500,000,000), from the Kindergarten-University Public Education
6 Facilities Bond Act of 2004.

7 (B) The eligibility amount for proposed projects that relieve
8 overcrowding is the difference between the alternative enrollment
9 projection method for the year the application is submitted and the
10 cohort survival enrollment projection method, as defined by
11 paragraph (2), for the same year, adjusted by the existing pupil
12 capacity in excess of the projected enrollment according to the
13 cohort survival enrollment projection method.

14 (C) The Office of Public School Construction shall determine
15 whether each proposed project will relieve overcrowding,
16 including, but not limited to, the elimination of the use of Concept
17 6 calendars, four track year-round calendars, or busing in excess
18 of 40 minutes, and recommend approval to the board. The number
19 of unhoused pupil grants requested in the application for funding
20 from the eligibility determined pursuant to this paragraph shall be
21 limited to the number of seats necessary to relieve overcrowding,
22 including, but not limited to, the elimination of the use of Concept
23 6 calendars, four track year-round calendars, or busing in excess
24 of 40 minutes, less the number of unhoused pupil grants attributed
25 to that school as a source school in an approved application
26 pursuant to Section 17078.24.

27 (D) A school district shall use the same alternative enrollment
28 projection methodology for all applications submitted pursuant to
29 this paragraph and shall calculate those projections in accordance
30 with the same districtwide or high school attendance area used for
31 the enrollment projection made pursuant to paragraph (2).

32 (2) A school district shall calculate enrollment projections for
33 the fifth *or 10th* year beyond the fiscal year in which the application
34 is made. Projected enrollment shall be determined by utilizing the
35 cohort survival enrollment projection system, as defined and
36 approved by the board. The board may supplement the cohort
37 survival enrollment projection with any of the following:

38 (A) The number of unhoused pupils that are anticipated as a
39 result of dwelling units proposed pursuant to approved and valid
40 tentative subdivision maps.

1 (B) Modified weighting mechanisms, if the board determines
2 that they best represent the enrollment trends of the district.
3 Mechanisms pursuant to this subparagraph shall be developed and
4 applied in consultation with the Demographic Research Unit of
5 the Department of Finance.

6 (C) An adjustment to reflect the effects on kindergarten and
7 first grade enrollment of changes in birth rates within the school
8 district or high school attendance area boundaries.

9 (3) ~~(A)~~—A school district may submit an enrollment projection
10 for either a 5th year or a 10th year beyond the fiscal year in which
11 the application is made. A school district that bases its enrollment
12 projection calculation on a high school attendance area may use
13 pupil residence in that attendance area to calculate enrollment. A
14 school district that utilizes pupil residence shall do so for all high
15 school attendance areas within the district. A pupil shall not be
16 included in a high school attendance area enrollment projection
17 based on pupil residence unless that pupil was included in the
18 California Basic Educational Data System (CBEDS) report of the
19 district for the same enrollment year. The board may require a
20 district to provide a reconciliation of the districtwide CBEDS and
21 residency data. The board also may adopt regulations to specify
22 the format and certification requirements for a school district that
23 submits residency data.

24 (b) (1) Add the number of pupils that may be adequately housed
25 in the existing school building capacity of the applicant school
26 district as determined pursuant to Article 2 (commencing with
27 Section 17071.10) to the number of pupils for whom permanent
28 facilities were provided from any state *source* or *permanent*
29 *facilities provided entirely from a* local funding source after the
30 existing school building capacity was determined pursuant to
31 Article 2 (commencing with Section 17071.10). For this purpose,
32 the total number of pupils for whom facilities were provided shall
33 be determined using the pupil loading formula set forth in ~~Section~~
34 *Sections 17071.25 and 17071.30.*

35 (2) Subtract from the number of pupils calculated in paragraph
36 (1) the number of pupils that were housed in facilities to which
37 the school district or county office of education relinquished title
38 as the result of a transfer of a special education program between
39 a school district and a county office of education or special
40 education local plan area, if applicable. For this purpose, the total

number of pupils that were housed in the facilities to which title was relinquished shall be determined using the pupil loading formula adopted by the board pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 17071.25. For purposes of this paragraph, title also includes any lease interest with a duration of greater than five years.

(c) Subtract the number of pupils pursuant to subdivision (b) from the number of pupils determined pursuant to paragraph (2) of subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

(e) Apply the increase or decrease resulting from the difference between the most recent report made pursuant to Section 42268, and the report used in determining the baseline capacity of the school district pursuant to subdivision (a) of Section 17071.25.

(f) For purposes of calculating projected enrollment pursuant to subdivision (a), the board may adopt regulations to ensure that the enrollment calculation of individuals with exceptional needs receiving special education services is adjusted in the enrollment reporting period in which the transfer occurs and three previous school years as a result of a transfer of a special education program between a school district and a county office of education or a special education local plan area. However, the projected enrollment calculation of a county office of education shall only be adjusted if a transfer of title for the special education program facilities has occurred. The regulations, if adopted, shall ensure that if a transfer of title to special education program facilities constructed with state funds occurs within 10 years after initial occupancy of the facility, the receiving school district or school districts shall remit to the state a proportionate share of any financial hardship assistance provided for the project pursuant to Section 17075.10, if applicable.

(g) For a school district with an enrollment of 2,500 or less, an adjustment in enrollment projections shall not result in a loss of ongoing eligibility to that school district for a period of three years from the date of the approval of eligibility by the board.

SEC. 5. Section 17072.32 of the Education Code is amended to read:

1 17072.32. ~~(a)~~ For any project that has received an
2 apportionment pursuant to Section 17072.30, funding shall be
3 released in amounts equal to the amount of the local match upon
4 certification by the school district that the school district has
5 entered into a binding contract for ~~completion of professional~~
6 ~~services or for construction, or both, in order to complete the~~
7 approved project.

8 ~~(b) This section is operative January 1, 2008.~~

9 *SEC. 6. Section 17074.15 of the Education Code is amended*
10 *to read:*

11 17074.15. (a) The board shall release disbursements to school
12 districts with approved applications for modernization, to the extent
13 state funds are available for the state's 80-percent share, and the
14 school district has provided its 20-percent local match. Subject to
15 the availability of funds, the board shall apportion funds to an
16 eligible school district only upon the approval of the project by
17 the Department of General Services pursuant to the Field Act, as
18 defined in Section 17281, including, but not limited to, a project
19 that complies with the Field Act by complying with Section
20 17280.5, and evidence that the certification by the school district
21 that the required 20-percent matching funds from local sources
22 have been expended by the district for the project, or have been
23 deposited in the county fund or will be expended by the district
24 by the time of completion of the project, and evidence that the
25 district has entered into a binding contract for ~~the completion of~~
26 ~~that professional services or for construction, or both, in order to~~
27 ~~complete the~~ project. If state funds are insufficient to fund all
28 qualifying school districts, the board shall fund all qualifying
29 school districts in the order in which the application for funding
30 was approved by the board.

31 (b) This section shall apply only to an application filed on or
32 before April 29, 2002, regardless of the source of state bond
33 funding.

34 *SEC. 7. Section 17074.16 of the Education Code is amended*
35 *to read:*

36 17074.16. (a) The board shall release disbursements to school
37 districts with approved applications for modernization, to the extent
38 state funds are available for the state's 60-percent share, and the
39 school district has provided its 40-percent local match. Subject to
40 the availability of funds, the board shall apportion funds to an

1 eligible school district only upon the approval of the project by
2 the Department of General Services pursuant to the Field Act, as
3 defined in Section 17281, including, but not limited to, a project
4 that complies with the Field Act by complying with Section
5 17280.5, and evidence that the certification by the school district
6 that the required 40-percent matching funds from local sources
7 have been expended by the district for the project, or have been
8 deposited in the county fund or will be expended by the district
9 by the time of completion of the project, and evidence that the
10 district has entered into a binding contract for the completion of
11 ~~that professional services or for construction, or both, in order to~~
12 ~~complete the project.~~ If state funds are insufficient to fund all
13 qualifying school districts, the board shall fund all qualifying
14 school districts in the order in which the application for funding
15 was approved by the board.

16 (b) This section shall apply only to an application that was filed
17 after April 29, 2002.

18 *SEC. 8. Section 17074.26 of the Education Code is amended*
19 *to read:*

20 17074.26. The board shall adopt regulations to adjust the
21 per-pupil amounts set forth in Section ~~17074.14~~ 17074.10 for
22 modernization projects for school buildings that are 50 years old
23 or older based upon the higher costs associated with modernizing
24 older buildings.

25 *SEC. 9. Section 17076.10 of the Education Code is amended*
26 *to read:*

27 17076.10. (a) A school district that has received any funds
28 pursuant to this chapter shall submit a summary report of
29 expenditure of state funds and of district matching funds annually
30 until all state funds and district matching funds are expended, and
31 shall then submit a final report to the board. The board may require
32 an audit of these reports or other district records to ensure that all
33 funds received pursuant to this chapter are expended in accordance
34 with program requirements.

35 (b) If the board finds that a participating school district has made
36 no substantial progress towards increasing its pupil capacity or
37 modernizing its facilities within 18 months of the receipt of any
38 funding pursuant to this chapter, the board shall rescind the
39 apportionment in an amount equal to the unexpended funds.

(c) (1) If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid to the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, within 60 days. If the school district fails to make the required payment within 60 days, the department shall notify the Controller and the school district in writing, and the Controller shall deduct an amount equal to the amount received by the school district under this subdivision, from the school district's next principal apportionment or apportionments of state funds to the school district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained by the Controller shall be deposited into the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as appropriate.

(2) Notwithstanding paragraph (1), if the board determines that repayment of the full liability within 60 days after the board action would constitute a severe financial hardship, as defined by the board, for the school district, the board shall approve a plan of equal annual payments over a period of up to five years. The plan shall include interest on each year's outstanding balance at the rate earned on the state's Pooled Money Investment Account during that year. The Controller shall withhold amounts, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution, pursuant to the plan.

(d) If a school district has received an apportionment, but has not met the criteria to have funds released pursuant to Section 17072.32 ~~or, 17074.15, or 17074.16~~ within a period established ~~by the board, but not to exceed~~ 18 months, the board shall rescind the apportionment and deny the district's application. *The board may, at its discretion, extend the time period in which a school district must have met the criteria to have funds released pursuant to Section 17072.32, 17074.15, or 17074.16.*

O